Filed 4/2/09 P. v. Sandoval CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CHRISTOPHER MARTIN SANDOVAL, Defendant and Appellant.	G040598 (Super. Ct. No. 06NF3088) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William Lee Evans, Judge. Affirmed.

Vikas Bajaj for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Pamela Ratner Sobeck and Donald W. Ostertag, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant contends there is insufficient evidence to support the jury's verdict and findings. We affirm.

I

FACTS

A jury found defendant Christopher Martin Sandoval guilty of two violations of Penal Code section 288, subdivision (a) as charged in counts one and two of the information. (All subsequent statutory references are to the Penal Code.) The jury found it to be true defendant had substantial sexual conduct with the victim within the meaning of section 1203.066, subdivision (a)(8) in both violations. The court sentenced defendant to six years in state prison.

Benjamin A., one month short of his 14th birthday when he testified in 2008, met defendant at a church in Anaheim three years before he testified, when Benjamin was in the fifth grade. According to Benjamin, he and defendant "were really good friends." They played "video games and [we] would go to the movies, stuff like that." Defendant took Benjamin to Disneyland and to "the water park" in Irvine. They also saw each other at church on Wednesdays and Sundays.

During one visit in 2005, while in a car in a park near the church, defendant asked Benjamin to pull down his pants. Defendant asked him to take his penis out of his boxers. Benjamin related: "He would try to explain about what I would see in the future, about like hair growth and stuff like that." Defendant also took out his own penis; defendant touched Benjamin's penis. It was soft at first; then defendant rubbed it until it became erect and a "liquidy" substance came out.

Benjamin said he "felt a little bit weird about it." He did not tell his parents about the incident "because I didn't want to let Chris down, didn't want to get him in trouble." He said incidents like this happened "about maybe four times about."

On another occasion, the two went to a movie theatre at Downtown Disney to see "Cheaper by the Dozen II." Defendant asked Benjamin to play Truth or Dare. Defendant would place a piece of popcorn down his and Benjamin's pants and dare Benjamin to eat it. Defendant had his zipper down. Benjamin was asked if he touched defendant's penis when he reached for popcorn. He said, "I did feel it with the tip of my finger."

Later, in a car once again, defendant asked Benjamin to play the game and to take out his penis. Defendant asked Benjamin to "like pee in a cup and stuff like that." Defendant took out his own penis and instructed Benjamin to "rub mine like he did in the first incident." Defendant also asked him to stretch the skin on the end of his penis.

When he was in the sixth grade, Benjamin saw a sexual harassment video, and he wrote about the incidents with defendant on a note card: "What do you do when someone toches [*sic*] you somewhere but are teaching you about puberty or something else? I feel so nervous about it, and this is the first time that I've ever told this to any one. It is really hard to say this and [it's] scary." That was the first time he disclosed the incidents to anyone.

Detective Todd Megerle, of the Los Angeles County Sheriff's Department, was with the special victims unit in 2006. A transcription of Megerle's recorded conversation with defendant was admitted into evidence. Defendant admitted he touched Benjamin's penis three or four times. He admitted he exposed himself and rubbed his own penis in front of Benjamin. He confirmed he touched his own penis and "some stuff" came out. He also admitted he "got some popcorn and I put it down [Benjamin's] pants."

II

DISCUSSION

Sufficiency of Evidence

Defendant contends there is an insufficient evidence to support his conviction. He specifically points to the incident in the movie theatre and says there is a lack of credible evidence he touched Benjamin's penis or that Benjamin touched his penis.

"Any person who willfully and lewdly commits any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years." (§ 288, subd. (a).)

In addressing such challenges to the sufficiency of evidence, "the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence — evidence that is reasonable, credible and of solid value — such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citations.] The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.] Although it is the jury's duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.] '"If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a

contrary finding does not warrant a reversal of the judgment. [Citation.]"' [Citation.]" (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.)

There is evidence that defendant and the victim touched each other's penis. With regard to the movie theatre incident, Benjamin testified he felt defendant's penis with the tip of his finger when he engaged in defendant's popcorn game. We conclude the evidence is sufficient to support defendant's convictions.

§ 1203.066

Defendant further contends the allegation under section 1203.066, subdivision (a)(8), found to be true by the jury, "in light of the evidence presented regarding Count 2, is patently insufficient and cannot withstand appellate review."

"Notwithstanding Section 1203 or any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons: [¶] . . . [¶] (8) A person who, in violating Section 288 or 288.5, has substantial sexual conduct with a victim who is under 14 years of age." (§ 1203.066, subd. (a)(8).)

"'"'Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.' [Citation.] Masturbation 'encompasses any touching or contact, however slight, of the genitals of either the victim or the offender, with the requisite intent.' [Citation.]" (*People v. Carlin* (2007) 150 Cal.App.4th 322, 333.)

Here there is substantial evidence of touching or contact with the requisite intent. Accordingly, there is sufficient evidence to support the jury's true finding

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.